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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WYNN COGGINS, et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**JOINT CASE MANAGEMENT
STATEMENT**

Date: February 5, 2021

Time: 10:00 a.m. PST

Place: Courtroom 8

Judge: Hon. Lucy H. Koh

Pursuant to Civil Local Rule 16-10(d) and the Court's January 15, 2021 Case Management Order (Dkt. 456), the parties to this action, by their respective counsel, respectfully submit the following Joint Case Management Statement in anticipation of the Further Case Management Conference scheduled for February 5, 2021 at 10:00 a.m. For the reasons set forth below, in light of Executive Order No. 13986, "Executive Order on Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census," issued on January 20, 2021, and the parties' ongoing discussions concerning what further proceedings may be appropriate in this case, Defendants request a further 21-day stay of the case. Additionally, in light of the expected provision of certain data and the hopeful resolution of certain data issues between the parties, Defendants also request a further 21-day stay of further proceedings on Plaintiffs' Motion to Compel and for Sanctions, currently stayed until February 5, 2021, pursuant to the Court's Order of January 31, 2021 (Dkt. 464).

The parties propose that the case management conference scheduled for February 5, 2021 be continued to February 26, 2021, at which point the parties expect to provide detailed updates to the Court about the status of their discussions and potential resolution of this matter.

I. REQUEST FOR A FURTHER 21-DAY STAY OF LITIGATION TO ALLOW FOR ONGOING DISCUSSIONS BETWEEN THE PARTIES

As indicated in the parties' Stipulation and Proposed Order Regarding a Stay of Further Proceedings on Plaintiffs' Motion to Compel (Dkt. 363), since the previous Case Management Conference, the parties have engaged in good-faith discussions concerning the potential resolution of this case. Conversations have taken place and will continue to take place between counsel representing the parties and between Plaintiffs' counsel and Census Bureau personnel. These discussions have been fruitful and parties have largely reached agreement on key portions of Plaintiffs' claims. For example:

- (1) **Presidential Memorandum.** On January 20, 2021, President Biden signed Executive Order 13986, which revoked Executive Order 13880 ("Collecting Information About Citizenship Status in Connection With the Decennial Census") and the Presidential Memorandum of July 21, 2020 ("Excluding Illegal Aliens

from the Apportionment Base Following the 2020 Census”). Exec. Order No. 13986, 86 Fed. Reg. 7015 (Jan. 25, 2021). Consistent with Executive Order 13986, the tabulation of total population by States based on 2020 Census data and described by 13 U.S.C. § 141(b), and the P.L. 94-171 Redistricting Summary Data File based on 2020 Census data and described by 13 U.S.C. § 141(c), will not include or otherwise incorporate any information on citizenship or immigration status, nor will such counts or data products be affected by any information on citizenship or immigration status.

- (2) **Processing Timeline.** The Census Bureau is scheduled to release the results of the 2020 Census by April 30, 2021. As in prior censuses, the Census Bureau may wish to release the results a short period before the scheduled release date. However, the Census Bureau will not under any circumstances report the results of the 2020 Census to the Secretary of the Department of Commerce, the President, and Congress, before April 16, 2021. This schedule is equivalent to the COVID-19 plan timeline for data processing sought by Plaintiffs’ Second Amended Complaint.

The parties have memorialized these two resolved issues into the attached stipulation and proposed order seeking to extend the stay.

The parties are continuing to engage in good faith discussions regarding resolving the remaining issues in this case, in whole or in part, including (a) data processing steps being taken and that should appropriately be taken, and (b) identification and appropriate rectification of potential field operation/data collection quality issues (if any). These discussions are ongoing, and the parties believe that it is in the best interests of the parties and the public to stay further proceedings in this case to allow those discussions to continue. The proposed stay would apply to any outstanding obligations to the Court, as well as to all outstanding discovery (*see* below regarding the requested additional stay of further proceedings related to Plaintiffs’ Motion to Compel).

1 The parties agree that nothing in this Joint Case Management Statement or in the
 2 representations made by either party during their ongoing discussions shall apply to change or
 3 limit Defendants' obligations to respond to information requests from Congress, the Office of
 4 Inspector General, or the Government Accountability Office.

5 The parties therefore request a stay of all proceedings and obligations not otherwise
 6 specifically addressed in this Case Management Statement until February 26, 2021. The parties
 7 request that the Court continue the Case Management Conference currently scheduled for Friday,
 8 February 5, 2021, until Friday, February 26, 2021.

9 **II. REQUEST FOR A FURTHER 21-DAY STAY OF FURTHER PROCEEDINGS**
 10 **CONCERNING PLAINTIFFS' MOTION TO COMPEL AND FOR SANCTIONS**

11 On January 28, 2021, the Magistrate Judge panel granted Plaintiffs' Renewed Motion to
 12 Compel and deferred ruling on their Motion for Sanctions (Dkt. 462). On January 30, 2021, the
 13 parties filed a stipulation requesting a stay of further proceedings on the motion to compel for
 14 seven days on the basis of the parties' ongoing discussions and their intent to resolve the
 15 outstanding data issues without further court intervention (Dkt. 463). The Court granted the
 16 requested stay (Dkt. 464), and during the five days that have so far elapsed, the parties have
 17 made progress towards resolving the issues addressed in the Plaintiffs' motion. The parties
 18 continue to agree that it is in the best interest of both the parties and the public to focus their
 19 efforts on their ongoing discussions and the provision by Defendants of targeted information
 20 requested by Plaintiffs. For these reasons, the parties propose a further stay of 21 days for
 21 proceedings related to Plaintiffs' motion to compel, to be coextensive with the requested stay of
 22 the case as a whole.

23 **III. EXPIRATION OF THE REQUESTED STAY**

24 Defendants acknowledge and represent that, should the parties not reach resolution (or
 25 request an additional stay) and the case restarts once the 21-day stay is lifted (under the exact
 26 same schedule currently in place, continued by 21 days), Defendants will not resist or challenge
 27 any of their discovery obligations or depositions as a result of the scheduling stays in this case,
 28

1 but Defendants reserve their rights to assert the objections that they would have had in the
2 normal course.

3 The parties propose providing a Joint Case Management Statement two business days
4 before the conclusion of the proposed 21-day stay, should the Court enter a stay.

5
6 Dated: February 3, 2021

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18 **ATTESTATION**

19
20 I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this
21 document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred
22 in this filing.

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